



House of Representatives

File No. 664

General Assembly

February Session, 2018

(Reprint of File No. 35)

Substitute House Bill No. 5175
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 2, 2018

***AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF
INFORMATION ACT AND PETITIONS FOR RELIEF FROM VEXATIOUS
REQUESTERS.***

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Subsection (b) of section 1-206 of the 2018 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2018*):

4 (b) (1) Any person denied the right to inspect or copy records under
5 section 1-210 or wrongfully denied the right to attend any meeting of a
6 public agency or denied any other right conferred by the Freedom of
7 Information Act may appeal therefrom to the Freedom of Information
8 Commission, by filing a notice of appeal with said commission. A
9 notice of appeal shall be filed not later than thirty days after such
10 denial, except in the case of an unnoticed or secret meeting, in which
11 case the appeal shall be filed not later than thirty days after the person
12 filing the appeal receives actual or constructive notice that such
13 meeting was held. For purposes of this subsection, such notice of
14 appeal shall be deemed to be filed on the date it is received by said

15 commission or on the date it is postmarked, if received more than
16 thirty days after the date of the denial from which such appeal is taken.
17 Upon receipt of such notice, the commission shall serve upon all
18 parties, by certified or registered mail, a copy of such notice together
19 with any other notice or order of such commission. In the case of the
20 denial of a request to inspect or copy records contained in a public
21 employee's personnel or medical file or similar file under subsection
22 (c) of section 1-214, the commission shall include with its notice or
23 order an order requiring the public agency to notify any employee
24 whose records are the subject of an appeal, and the employee's
25 collective bargaining representative, if any, of the commission's
26 proceedings and, if any such employee or collective bargaining
27 representative has filed an objection under said subsection (c), the
28 agency shall provide the required notice to such employee and
29 collective bargaining representative by certified mail, return receipt
30 requested or by hand delivery with a signed receipt. A public
31 employee whose personnel or medical file or similar file is the subject
32 of an appeal under this subsection may intervene as a party in the
33 proceedings on the matter before the commission. Said commission
34 shall, after due notice to the parties, hear and decide the appeal within
35 one year after the filing of the notice of appeal. The commission shall
36 adopt regulations in accordance with chapter 54, establishing criteria
37 for those appeals which shall be privileged in their assignment for
38 hearing. Any such appeal shall be heard not later than thirty days after
39 receipt of a notice of appeal and decided not later than sixty days after
40 the hearing. If a notice of appeal concerns an announced agency
41 decision to meet in executive session or an ongoing agency practice of
42 meeting in executive sessions, for a stated purpose, the commission or
43 a member or members of the commission designated by its
44 chairperson shall serve notice upon the parties in accordance with this
45 section and hold a preliminary hearing on the appeal not later than
46 seventy-two hours after receipt of the notice, provided such notice
47 shall be given to the parties at least forty-eight hours prior to such
48 hearing. During such preliminary hearing, the commission shall take
49 evidence and receive testimony from the parties. If after the

50 preliminary hearing the commission finds probable cause to believe
51 that the agency decision or practice is in violation of sections 1-200 and
52 1-225, the agency shall not meet in executive session for such purpose
53 until the commission decides the appeal. If probable cause is found by
54 the commission, it shall conduct a final hearing on the appeal and
55 render its decision not later than five days after the completion of the
56 preliminary hearing. Such decision shall specify the commission's
57 findings of fact and conclusions of law.

58 (2) In any appeal to the Freedom of Information Commission under
59 subdivision (1) of this subsection or subsection (c) of this section, the
60 commission may confirm the action of the agency or order the agency
61 to provide relief that the commission, in its discretion, believes
62 appropriate to rectify the denial of any right conferred by the Freedom
63 of Information Act. The commission may declare null and void any
64 action taken at any meeting which a person was denied the right to
65 attend and may require the production or copying of any public
66 record. In addition, upon the finding that a denial of any right created
67 by the Freedom of Information Act was without reasonable grounds
68 and after the custodian or other official directly responsible for the
69 denial has been given an opportunity to be heard at a hearing
70 conducted in accordance with sections 4-176e to 4-184, inclusive, the
71 commission may, in its discretion, impose against the custodian or
72 other official a civil penalty of not less than twenty dollars nor more
73 than one thousand dollars. If the commission finds that a person has
74 taken an appeal under this subsection frivolously, without reasonable
75 grounds and solely for the purpose of harassing the agency from
76 which the appeal has been taken, after such person has been given an
77 opportunity to be heard at a hearing conducted in accordance with
78 sections 4-176e to 4-184, inclusive, the commission may, in its
79 discretion, impose against that person a civil penalty of not less than
80 twenty dollars nor more than one thousand dollars. The commission
81 shall notify a person of a penalty levied against him pursuant to this
82 subsection by written notice sent by certified or registered mail. If a
83 person fails to pay the penalty within thirty days of receiving such

84 notice, the superior court for the judicial district of Hartford shall, on
85 application of the commission, issue an order requiring the person to
86 pay the penalty imposed. If the executive director of the commission
87 has reason to believe an appeal under subdivision (1) of this subsection
88 or subsection (c) of this section (A) presents a claim beyond the
89 commission's jurisdiction; (B) would perpetrate an injustice; or (C)
90 would constitute an abuse of the commission's administrative process,
91 the executive director shall not schedule the appeal for hearing
92 without first seeking and obtaining leave of the commission. The
93 commission shall provide due notice to the parties and review
94 affidavits and written argument that the parties may submit and grant
95 or deny such leave summarily at its next regular meeting. The
96 commission shall grant such leave unless it finds that the appeal: (i)
97 Does not present a claim within the commission's jurisdiction; (ii)
98 would perpetrate an injustice; or (iii) would constitute an abuse of the
99 commission's administrative process. Any party aggrieved by the
100 commission's denial of such leave may apply to the superior court for
101 the judicial district of Hartford, within fifteen days of the commission
102 meeting at which such leave was denied, for an order requiring the
103 commission to hear such appeal.

104 (3) In making the findings and determination under subdivision (2)
105 of this subsection the commission shall consider the nature of any
106 injustice or abuse of administrative process, including but not limited
107 to: (A) The nature, content, language or subject matter of the request or
108 the appeal, including, among other factors, whether the request or
109 appeal is repetitious or cumulative; (B) the nature, content, language or
110 subject matter of prior or contemporaneous requests or appeals by the
111 person making the request or taking the appeal; [and] (C) the nature,
112 content, language or subject matter of other verbal and written
113 communications to any agency or any official of any agency from the
114 person making the request or taking the appeal; (D) any history of
115 nonappearance at commission proceedings or disruption of the
116 commission's administrative process, including, but not limited to,
117 delaying commission proceedings; and (E) the refusal to participate in

118 settlement conferences conducted by a commission ombudsman in
119 accordance with the commission's regulations.

120 (4) Notwithstanding any provision of this subsection to the
121 contrary, in the case of an appeal to the commission of a denial by a
122 public agency, the commission may, upon motion of such agency,
123 confirm the action of the agency and dismiss the appeal without a
124 hearing if it finds, after examining the notice of appeal and construing
125 all allegations most favorably to the appellant, that (A) the agency has
126 not violated the Freedom of Information Act, or (B) the agency has
127 committed a technical violation of the Freedom of Information Act that
128 constitutes a harmless error that does not infringe the appellant's rights
129 under said act.

130 (5) Notwithstanding any provision of this subsection, a public
131 agency may petition the commission for relief from a requester that the
132 public agency alleges is a vexatious requester. Such petition shall be
133 sworn under penalty of false statement, as provided in section 53a-
134 157b, and shall detail the conduct which the agency alleges
135 demonstrates a vexatious history of requests, including, but not
136 limited to: (A) The number of requests filed and the total number of
137 pending requests; (B) the scope of the requests; (C) the nature, content,
138 language or subject matter of the requests; (D) the nature, content,
139 language or subject matter of other oral and written communications
140 to the agency from the requester; and (E) a pattern of conduct that
141 amounts to an abuse of the right to access information under the
142 Freedom of Information Act or an interference with the operation of
143 the agency. Upon receipt of such petition, the executive director of the
144 commission shall review the petition and determine whether it
145 warrants a hearing. If the executive director determines that a hearing
146 is not warranted, the executive director shall recommend that the
147 commission deny the petition without a hearing. The commission shall
148 vote at its next regular meeting after such recommendation to accept or
149 reject such recommendation and, after such meeting, shall issue a
150 written explanation of the reasons for such acceptance or rejection. If
151 the executive director determines that a hearing is warranted, the

152 commission shall serve upon all parties, by certified or registered mail,
153 a copy of such petition together with any other notice or order of the
154 commission. The commission shall, after due notice to the parties, hear
155 and either grant or deny the petition within one year after its filing.
156 Upon a grant of such petition, the commission may provide
157 appropriate relief commensurate with the vexatious conduct,
158 including, but not limited to, an order that the agency need not comply
159 with future requests from the vexatious requester for a specified
160 period of time, but not to exceed one year. Any party aggrieved by the
161 commission's granting of such petition may apply to the superior court
162 for the judicial district of New Britain, within fifteen days of the
163 commission meeting at which such petition was granted, for an order
164 reversing the commission's decision.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2018	1-206(b)
-----------	-----------------	----------

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill expands the factors that the Freedom of Information Commission (FOIC) considers when determining whether to hear certain appeals brought under the Freedom of Information Act. It also allows the FOIC to grant relief to public agencies from “vexatious requesters.”

Since relief is nonmonetary and requests for relief are anticipated to be minimal, no fiscal impact is anticipated.

House “A” makes various changes to the underlying bill which does not alter the fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5175 (as amended by House "A")******AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF INFORMATION ACT AND PETITIONS FOR RELIEF FROM VEXATIOUS REQUESTERS.*****SUMMARY**

This bill (1) adds to the factors that the Freedom of Information Commission (FOIC) must consider when determining whether to hear certain appeals brought under the Freedom of Information Act (FOIA) and (2) establishes a procedure under which public agencies may petition FOIC for relief from “vexatious requesters.” Relief may include an order that the agency need not comply with future requests from the requester for a period of up to one year.

*House Amendment “A” adds the requirements that (1) agency petitions to FOIC be sworn under penalty of false statement and (2) FOIC explain, in writing, its reasons for accepting or rejecting a recommendation by the executive director to deny a petition.

EFFECTIVE DATE: October 1, 2018

CERTAIN FOIA APPEALS

By law, anyone aggrieved by a public agency's decision to deny access to a public meeting or information subject to disclosure under FOIA may appeal to FOIC. FOIC’s executive director must obtain the commission’s permission before scheduling any appeal that she believes (1) presents a claim beyond the commission’s jurisdiction, (2) would cause an injustice, or (3) would constitute an abuse of the commission’s administrative process.

The bill requires FOIC, when deciding whether to grant permission to schedule such an appeal, to consider additional information about the nature of any injustice or abuse of administrative process.

Specifically, it must consider:

1. whether the request or appeal is repetitious or cumulative;
2. any history of nonappearance at commission proceedings or disruption of FOIC's administrative process, including delaying proceedings; and
3. any refusals to participate in settlement conferences conducted by an FOIC ombudsman in accordance with regulations.

Under existing law, FOIC must also consider the nature, content, language, or subject matter of (1) the request or appeal, (2) prior or contemporaneous requests or appeals, and (3) other verbal or written communications to the agency or its officials, by the person making the request or taking the appeal. It must grant permission to hear the appeal unless it finds that the executive director's belief about the nature of the appeal is well founded.

VEXATIOUS REQUESTERS

Agency Petition

The bill authorizes public agencies to petition FOIC for relief from requesters they allege to be vexatious. The petition must be sworn under penalty of false statement and detail the alleged conduct that demonstrates a vexatious history of requests, including:

1. the number of requests filed and pending;
2. the scope of the requests;
3. the requests' nature, content, language, or subject matter and the requester's other oral or written communications to the agency; and
4. a pattern of conduct that amounts to an abuse of the right to access information under FOIA or an interference with the agency's operation.

By law, false statement is a class A misdemeanor, punishable by up to one year in prison, a fine of up to \$1,000, or both (CGS § 53a-157b).

FOIC Review

Under the bill, upon receiving a petition, FOIC's executive director must review it and determine whether it warrants a hearing. If the executive director determines that a hearing is not warranted, she must recommend that the commission deny the petition. At its next regular meeting, the commission must vote on the recommendation and after the meeting, it must issue a written explanation of the reasons for accepting or rejecting the recommendation.

If the executive director determines that a hearing is warranted, the commission must serve all parties, by certified or registered mail, with a copy of the petition and any other FOIC notice or order. After due notice, the commission must hear and grant or deny the petition within one year after its filing. If the commission grants a petition, it may provide appropriate relief commensurate with the vexatious conduct, including an order that the agency need not comply with future requests from the requester for a specified period of time, up to one year.

Existing law allows FOIC to impose a civil penalty of up to \$1,000 if it determines, after a hearing, that someone has taken an appeal frivolously, without reasonable grounds, and solely to harass the agency.

Appeal

Under the bill, any party aggrieved by FOIC's decision to grant a petition may apply to New Britain Superior Court for an order reversing it. The deadline for doing so is 15 days after the meeting when the commission granted the petition.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 16 Nay 0 (03/09/2018)